LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 19 1970
JOHN F. DAVIS, CLERK

No. 515

# In the Supreme Court of the United States

OCTOBER TERM, 1969

UNITED STATES OF AMERICA AND HONORABLE SARAH T. HUGHES, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS, PETITIONERS

*v.*

GIFFORD-HILL-AMERICAN, INC., UNITED CONCRETE PIPE CORPORATION AND LLOYD R. EARL

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## MEMORANDUM SUGGESTING MOOTNESS

ERWIN N. GRISWOLD,
*Solicitor General.*

# In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 515

UNITED STATES OF AMERICA AND HONORABLE SARAH T. HUGHES, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS, PETITIONERS

*v.*

GIFFORD-HILL-AMERICAN, INC., UNITED CONCRETE PIPE CORPORATION AND LLOYD R. EARL

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## MEMORANDUM SUGGESTING MOOTNESS

We file this memorandum to advise the Court of facts, occurring since the grant of our petition for a writ of certiorari, which we believe render the cause moot.

The judgment of the Court of Appeals for the Fifth Circuit, entered June 2, 1969, granted mandamus petitions by corporate defendants in the underlying criminal antitrust action (Cr–3–690, N.D. Texas, Dallas Div.), seeking pre-trial inspection of certain grand jury transcripts. The questions presented here

involve the propriety of requiring disclosure of such transcripts under Rules 16(a)(3) and 16(b) of the Federal Rules of Criminal Procedure.

On December 19, 1969, the district court, over objection by the United States, accepted pleas of *nolo contendere* from defendants Gifford-Hill-American, Inc. and United Concrete Pipe Corp., (two of the three respondents here), entering judgments of conviction and imposing fines thereon. Copies of these judgments are attached. Since the indictment against the third respondent here, the individual defendant Lloyd R. Earl, had earlier been dismissed upon the government's motion, the December 19 judgments effected a final disposition of the underlying criminal action.

Although the questions presented here are likely to recur in future cases, the respondents in this case no longer have any interest in inspection of the grand jury transcripts. Their claim rested upon their alleged needs in preparing their defenses in the criminal proceeding now terminated. Thus there no longer exists a case or controversy upon which this Court's jurisdiction can be based.

In these circumstances, we suggest that the Court vacate the judgment of the court of appeals, and remand the case to that court with instructions to dismiss the mandamus proceedings as moot. See *Simon* v. *Wharton*, 389 U.S. 425; *J. Aron & Co.* v. *Mississippi Shipping Co.*, 361 U.S. 115; *United States* v. *Munsingwear, Inc.*, 340 U.S. 36.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*

JANUARY 1970.

# APPENDIX

In the United States District Court for the Northern District of Texas, Dallas Division

CR–3–690

UNITED STATES OF AMERICA

*v.*

UNITED CONCRETE PIPE CORPORATION AND GIFFORD-HILL-AMERICAN, INC.

JUDGMENT

On this 19th day of December, 1969, came the attorney for the Government and the defendant Gifford-Hill-American, Inc. appeared by counsel, Stanley E. Neely of Locke, Purnell, Boren, Laney & Neely.

IT IS ADJUDGED that the defendant Gifford-Hill-American, Inc. has been convicted upon its plea of nolo contendere of the offense of engaging in an unlawful combination and conspiracy in restraint of interstate trade and commerce in violation of Title 15, United States Code, Section 1, as charged in the Indictment, and the Court having asked the defendant Gifford-Hill-American, Inc. whether it had anything to say why judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant Gifford-Hill-American, Inc. is convicted as charged.

IT IS ADJUDGED that the defendant Gifford-Hill-American, Inc. pay a fine unto the United States.

of America in the amount of twenty thousand dollars ($20,000.00).

IT IS ADJUDGED that the execution of the payment of the fine herein imposed is stayed for 10 days.

(S) W. M. TAYLOR, JR.,
*United States District Judge.*

Filed: December 19, 1969.

BAILEY F. RANKIN, *Clerk.*
By ——— ———
*Deputy.*

In the United States District Court for the Northern District of Texas, Dallas Division

CR-3-690

UNITED STATES OF AMERICA

*v.*

UNITED CONCRETE PIPE CORPORATION AND GIFFORD-HILL-AMERICAN, INC.

JUDGMENT

On this 19th day of December, 1969, came the attorney for the Government and the defendant United Concrete Pipe Corporation appeared by counsel, John J. Hanson of Gibson, Dunn & Crutcher, and William P. Fonville.

IT IS ADJUDGED that the defendant United Concrete Pipe Corporation has been convicted upon its plea of nolo contendere of the offense of engaging in an unlawful combination and conspiracy in restraint of interstate trade and commerce in violation of Title 15, United States Code, Section 1, as charged in the Indictment, and the Court having asked the defendant United Concrete Pipe Corporation whether it had anything to say why judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant United Concrete Pipe Corporation is convicted as charged.

IT IS ADJUDGED that the defendant United Concrete Pipe Corporation pay a fine unto the United States of America in the amount of $20,000.00.

IT IS ADJUDGED that the execution of the payment of the fine herein imposed is stayed for 10 days.

(S) W. M. TAYLOR, Jr.,

*United States District Judge.*

Filed: December 19, 1969.

BAILEY F. RANKIN, *Clerk.*

By ——— ———

*Deputy.*

U.S. GOVERNMENT PRINTING OFFICE: 1970